UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DWAYN RICH and PAMELA RICH,	)	
Plaintiffs	)	
v.	)	Civil 99-7-B
VALMET, INC.,	)	
Defendant	)	

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

In this case, Dwayn Rich ("Rich") brings a products liability action against Valmet, Inc, ("Valmet") for injuries that he suffered when his right arm was caught in a paper winder manufactured by Valmet. In alleging that the winder was defectively designed, he advances three different theories of liability -- strict liability, negligence, and breach of warranty. His wife, Pamela Rich, brings a claim for loss of consortium. Before this Court is Valmet's motion for summary judgment. For reasons stated below, Valmet's motion for summary judgment is DENIED.[1]

I. SUMMARY JUDGMENT

Summary judgment is appropriate in the absence of a genuine issue as to any material fact and when the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An

[1] For the purposes of summary judgment, the Court assumes that all expert testimony will be admitted into evidence, and that all motions to exclude such testimony will be denied. Kumho/Daubert hearings with regard to the design experts of Plaintiffs and Defendant have been scheduled for October 18, 1999. See Kumho Tire Co. v. Carmichael, 119 S.Ct. 1167 (1999) and Daubert v. Merrell Dow Pharms. Inc., 509 U.S. 579 (1993). In the event that all or part of this expert testimony is excluded, the Court may revisit the motion for summary judgment.

issue is genuine for these purposes if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A material fact is one that has "the potential to affect the outcome of the suit under the applicable law." Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Facts may be drawn from "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits." Fed. R. Civ. P. 56(c). "Fed. R. Civ. P. 56 does not ask which party's evidence is more plentiful, or better credentialled, or stronger." Greenburg v. Puerto Rico Maritime Shipping Auth., 835 F.2d 932, 936 (1st Cir. 1987). Rather, for the purposes of summary judgment the Court views the record in the light most favorable to the nonmoving party. See McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 315 (1st Cir. 1995).

II. MATERIAL FACTS AND DISCUSSION

Rich worked at Madison Paper Industries ("Madison") when he was his arm was caught in a JR 1000 paper winder ("winder"). Valmet manufactured the winder, supervised its installation, and has continued to visit and advise Madison about this machine.

The winder necessitates three operators to run properly. This winder is able to divide one large sheet of paper into two, so that the machine could rewind paper onto two rolls at the same time. This system requires an assistant operator at each roll, and Rich was one of these operators on April 6, 1996, the day of the accident. On that day, Steve Sidell ("Sidell") was the controls operator who oversaw the winder, and Victor Fanjoy was the other assistant operator. At some point on that day the roll of paper broke, and the winder was shut down. In the event of such a break, the guards to the nip on the winder are raised in order to perform a "slice" to repair the break. With the guards up Rich and Sidell performed such a splice. At some point Sidell left to

assume his position and Rich signaled him to restart the machine. When Rich noticed that the paper was misaligned, he approached the nip area and, with a piece of "broke" (the paper removed during the splice), he attempted to realign the paper. It was during this attempt that his hand and arm were pulled into the machine, resulting in his injury.

In order to succeed on his claims, Plaintiff must prove the winder was defective, regardless of whether he pursues his claim under strict liability, negligence, or breach of warranty. See Guiggey v. Bombardier, 615 A.2d 1169, 1171-72 (Me. 1992) (noting that all three theories require such a showing). Proof of defective design requires an examination of the product under the risk-utility test. Under this test, one must consider the "utility of a product's design, the risk of such design, and the feasibility of safer alternatives." Walker v. General Elec. Corp., 968 F.2d 116, 119 (1st Cir. 1992) (citing Stanley v. Sciavi Mobile Homes, Inc., 462 A.2d 1144, 1148 (Me. 1988)).

One commentator has noted that "[t]he nature of the claims that underlie products-liability actions commonly present complicated factual questions that are inappropriate for resolution without a full trial." 10A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2729.1 (3d ed. 1998). This case is no exception, since multiple factual disputes exist between the parties as to whether the winder was defective. Rather than rehash all of them, the Court will limit its discussion to a few of the significant disputes. For example, Plaintiff argues that the winder fails this risk-utility test because the controls operator of the winder is not stationed in a position where s/he can see both assistant operators. In the event of an accident involving an assistant operator, the controls operator would not see that the assistant is caught in the nip of the machine, and as a result the machine would continue to run, further harming the assistant operator. Plaintiff here alleges that these lack of sight lines caused greater injury to Rich, since the machine was

going "around and around" on Rich's arm and neck until Sidell walked out of the control room and discovered him. Plaintiff also alleges that the machine's emergency stop lanyard could not be reached from the low position that a worker must have to gain access to the nip. Therefore, Rich could not stop the machine once he was caught in it. Furthermore, Plaintiff alleges that a "stop and pop" feature should have been included with the machine. Such a feature would have opened the rolls once an operator managed to stop the machine by pulling the emergency stop lanyard. Such a feature would have allowed Rich to pull his arm out of the machine. Plaintiff also asserts that the machine should have contained a light curtain, also known as an electric eye, which would have stopped the winding drums when the guards are up unless an operator manually holds down a switch. The plaintiff also alleges that such an "eye" could also be installed in order to stop the machine once a worker gets too close to it. Defendant disputes that the absence of these features made the winder defective. Given this material dispute, it would be inappropriate for the Court to resolve this case on summary judgment.

Valmet also asserts multiple defenses that, stripped to their essence, all allege that Rich is responsible for this accident. While it is true that Plaintiff has admitted that he knew that it was dangerous to place his hand so close to the nip of the winder, a jury might reasonably find that he did not understand the extent of the risk he was taking when he attempted to realign the paper using the "broke." Indeed, Rich alleges that other workers often did the same thing when attempting to realign the paper, and that Valmet knew that workers took such risks.

Because there are genuine issues as to material facts in this case, the Courts DENIES Valmet's motion for summary judgment. SO ORDERED.

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MORTON A. BRODY
United States District Judge

Dated this 4th day of October, 1999.